

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MATTHEW CATALDI,

Plaintiff,

v.

IPA DIRECT, LLC,

Defendant.
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: Case No.: 1:16-cv-01289-LAK-BCM
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**IPA DIRECT, LLC'S
ANSWER AND AFFIRMATIVE
DEFENSES TO COMPLAINT**

Defendant, IPA Direct, LLC ("IPA Direct"), hereby answers and asserts affirmative defenses to the Plaintiff Matthew Cataldi's ("Plaintiff") Complaint. Except as expressly admitted herein, all allegations in the Complaint are denied, and Defendant IPA Direct answers the allegations of the Complaint as follows:

1. IPA Direct denies the allegations of Paragraph 1 of the Complaint.
2. IPA Direct denies the allegations of Paragraph 2 of the Complaint.
3. Paragraph 3 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies the allegations in Paragraph 3 of the Complaint and therefore, the allegations are denied.
4. Paragraph 4 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies knowledge or information sufficient to form

a belief as to the truth of the allegations in Paragraph 4 of the Complaint and therefore, the allegations are denied.

5. IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint and therefore, the allegations are denied.

6. IPA Direct denies the allegations of Paragraph 6 of the Complaint.

JURISDICTION AND VENUE

7. Paragraph 7 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint and therefore, the allegations are denied.

8. Paragraph 8 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies the allegations contained in paragraph 8.

9. Paragraph 9 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies the allegations contained in paragraph 9.

PARTIES

10. IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and therefore, the allegations are denied.

11. IPA Direct admits the allegations of paragraph 11.

12. Paragraph 12 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint and therefore, the allegations are denied.

FACTS

13. IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint and therefore, the allegations are denied.

14. IPA Direct admits that it uses a phone number with the digits 407-378-2743 and denies the remaining allegations in Paragraph 14 of the Complaint.

15. IPA Direct denies the allegations of Paragraph 15 of the Complaint.

16. IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint and therefore, the allegations are denied.

17. IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and therefore, the allegations are denied.

18. Paragraph 18 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies the allegations contained in paragraph 18.

19. IPA Direct denies the allegations of Paragraph 19 of the Complaint.

20. IPA Direct denies the allegations of Paragraph 20 of the Complaint.

21. IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore, the allegations are denied.

22. IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint and therefore, the allegations are denied.

23. IPA Direct denies the allegations of Paragraph 23 of the Complaint.

24. IPA Direct denies the allegations of Paragraph 24 of the Complaint.

FIRST CAUSE OF ACTION
Violations of the TCPA, 47 U.S.C. § 227(b)

25. IPA Direct realleges and reincorporates its Answers to paragraphs 1 through 24 as if fully set forth herein.

26. IPA Direct denies the allegations of Paragraph 26 of the Complaint.

27. IPA Direct denies the allegations of Paragraph 27 of the Complaint.

28. IPA Direct denies the allegations of Paragraph 28 of the Complaint.

29. Paragraph 29 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint and therefore, the allegations are denied.

30. IPA Direct denies the allegations of Paragraph 30 of the Complaint.

31. IPA Direct denies the allegations of Paragraph 31 of the Complaint.

SECOND CAUSE OF ACTION
Violations of the TCPA, 47 U.S.C. § 227(c)

32. IPA Direct realleges and reincorporates its Answers to paragraphs 1 through 31 as

if fully set forth herein.

33. IPA Direct denies the allegations of Paragraph 33 of the Complaint.

34. Paragraph 34 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint and therefore, the allegations are denied.

35. Paragraph 35 of the Complaint sets forth conclusions of law, to which no response is required. IPA Direct respectfully leaves all questions of law to be decided by the Court. To the extent a response is required, IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 of the Complaint and therefore, the allegations are denied.

36. IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint and therefore, the allegations are denied.

37. IPA Direct admits that it is a telesales marketing company consisting of licensed health insurance agents responsible for assisting consumers with obtaining health insurance coverage. IPA Direct denies all remaining allegations in Paragraph 37 of the Complaint.

38. IPA Direct denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint and therefore, the allegations are denied.

39. IPA Direct denies the allegations of Paragraph 39 of the Complaint.

40. IPA Direct denies knowledge or information sufficient to form a belief as to the

truth of the allegations contained in Paragraph 40 of the Complaint and therefore, the allegations are denied.

41. IPA Direct denies the allegations of Paragraph 41 of the Complaint.

42. IPA Direct denies the allegations of Paragraph 42 of the Complaint.

PRAYER FOR RELIEF

IPA Direct denies that Plaintiff is entitled to the relief requested in the “wherefore” clause in the “Prayer for Relief” section of the Complaint, including all subparts thereof.

AFFIRMATIVE DEFENSES

1. Plaintiff has no standing to assert the claims in the Complaint.

2. Plaintiff has failed to state a claim upon which relief may be granted.

3. Plaintiff is estopped from asserting his claims.

4. Plaintiff’s claims are barred by the doctrine of unclean hands.

5. Plaintiff has failed to show damages.

6. Plaintiff’s claims are barred, in whole or in part, because Plaintiff consented to receive calls at issue in this matter.

7. Plaintiff’s claims are barred, in whole or in part, by the doctrine of laches or are otherwise time barred.

8. Plaintiff’s claims are barred, in whole or in part, for lack of any actual injury.

9. Plaintiff’s claims are barred, in whole or in part, because any alleged damages were not caused by IPA Direct but instead by the acts or omissions of third parties for which IPA Direct is not responsible.

10. Plaintiff’s claims are barred, in whole or in part because IPA Direct substantially complied with the TCPA.

11. Plaintiff's claims are barred, in whole or in part, because IPA Direct did not willfully or knowingly violate the TCPA.

12. Plaintiff's claims are barred, in whole or in part, because IPA Direct did not use an auto-dialer as required for violations of the TCPA.

13. Plaintiff's claims are barred, in whole or in part, because Plaintiff is not on the do-no-call list as required for violations of the TCPA.

14. IPA Direct expressly reserves the right to amend or add any Affirmative Defenses as they become known throughout the course of litigation.

WHEREFORE, Defendant, IPA Direct, LLC, by counsel, Clyde & Co US LLP, respectfully requests that the Court enter judgment in favor of Defendant, that Plaintiff take nothing, dismissing the Complaint in its entirety, and for such other and further relief that the Court deems reasonably and just.

Dated: May 17, 2016
New York, New York

Respectfully submitted,

CLYDE & CO US LLP

By: /s/ Eileen Sorabella

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*Attorneys for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2016, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

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/s/ Eileen Sorabella

Eileen Sorabella